

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v.

20 CR 15 (PKC)

VIRGIL GRIFFITH,

Defendant.

Hearing

-----x

New York, N.Y.
July 20, 2021
2:10 p.m.

Before:

HON. P. KEVIN CASTEL,

District Judge

APPEARANCES

AUDREY STRAUSS

United States Attorney for the
Southern District of New York

BY: KIMBERLY RAVENER

KYLE WIRSHBA

Assistant United States Attorneys

BAKER MARQUART LLP

Attorneys for Defendant

BY: BRIAN KLEIN

KERI CURTIS AXEL

Also Present:

John Moscato, U.S. Pretrial Services

1 (Case called)

2 THE COURT: Good afternoon.

3 MS. RAVENER: Good afternoon, your Honor, Kimberly
4 Ravener and Kyle Wirshba for the government. We are joined at
5 counsel table by Pretrial Services Officer John Moscato.

6 THE COURT: Good afternoon.

7 Mr. Moscato, you're a pretrial services officer in
8 this district?

9 MR. MOSCATO: Yes, your Honor.

10 MR. KLEIN: Good afternoon, your Honor, Brian Klein
11 with Kerry Axel and Virgil Griffith.

12 THE COURT: Good afternoon to you all.

13 This is a bail review hearing, and I'll hear from the
14 government.

15 MS. RAVENER: Thank you, your Honor.

16 As we have submitted in our letter, the defendant has
17 violated his bail conditions. The bail order in place in this
18 case specifically prohibits the defendant from accessing his
19 cryptocurrency accounts. As the government has submitted, the
20 defendant and now, as he asserts, an individual acting on his
21 behalf have attempted to do exactly that.

22 Defense counsel's response admits that, at a minimum,
23 the defendant sent a follow-up e-mail to a cryptocurrency
24 exchange pursuing his access to cryptocurrency accounts there,
25 which, as the government has advised the Court, held nearly \$1

1 million in cryptocurrency at the time.

2 We will credit that the defendant may be using a third
3 party to act on his behalf at least some of the time. That is
4 a problem in and of itself, your Honor, because it evades the
5 computer monitoring conditions that are supposed to be in place
6 for this defendant.

7 But even putting aside this convoluted explanation
8 about how the defendant's mother purported to impersonate him
9 in an attempt to get access to these cryptocurrency accounts
10 and how defense counsel claims they advised her she could do
11 so, that follow-up e-mail sent by the defendant is an explicit
12 violation of paragraph 14 of the bail order, and the defense
13 provides no basis for how this e-mail could have possibly been
14 within the scope of their described advice. What we have seen
15 is only smoke and mirrors from the defense to try to
16 rationalize the defendant's conduct post hoc.

17 Even assuming that the defendant's mother sent that
18 first message to the exchange, the message was written in the
19 first person. It was designed to mislead the exchange into
20 providing access to the defendant's cryptocurrency accounts.
21 If not directly to the defendant, then to his agent. This
22 interpretation is a wholesale circumvention of the bail
23 conditions. It is absurd to read the conditions to permit an
24 agent of the defendant to act on the defendant's behalf, to do
25 the very things that the order prohibits.

1 The risk of flight is not mitigated by the defense
2 counsel's involvement in these bail violations. The evidence
3 shows that the defendant, and others acting on his behalf in
4 concert with him, exploited their alleged advice. Defense
5 counsel cannot possibly know that once access was granted to
6 these accounts, if this scheme worked, that the sole actions
7 the defendant would take would be to pay his legal fees. It's
8 also concerning that defense counsel's apparent advice was
9 motivated by a desire, apparently, to get paid.

10 The prohibition on the defendant's access to his
11 cryptocurrency accounts is a central feature to the bail terms
12 in this case and that's so for good reason. He is a
13 millionaire with few U.S. ties and a high incentive to flee.
14 He expressed a desire to renounce his U.S. citizenship and
15 purchase citizenship elsewhere.

16 THE COURT: When and where was that?

17 MS. RAVENER: Your Honor, that was during, I believe,
18 still the period of 2019 or so, after he committed the offense.

19 THE COURT: How do you know that? How do you know
20 that this is something he did?

21 MS. RAVENER: We have text messages, your Honor, that
22 reflect those statements, and we would be happy to present them
23 to the Court.

24 THE COURT: Have they been produced to the defendant?

25 MS. RAVENER: They have, your Honor.

1 The defendant is also charged, obviously, with a
2 serious national security offense that involved the evasion of
3 U.S. law and travel to a hostile foreign nation.

4 THE COURT: What's the maximum term of imprisonment on
5 the counts in the indictment?

6 MS. RAVENER: I believe it's 20 years, your Honor.

7 THE COURT: Go ahead.

8 MS. RAVENER: The defense's incentive to flee has only
9 intensified as the case has persisted, as the Court has ruled
10 on motions as we proceed to trial. We are facing trial in just
11 two months.

12 It bears noting for the Court that the government is
13 investigating the funds in this account. But what we
14 understand from reviewing the particular account the defendant
15 tried to access here is that it doesn't even hold the bulk of
16 the defendant's assets, and we know that because it does not
17 appear to contain the defendant's payments from his actual job,
18 which was at the Ethereum Foundation. So this is not even an
19 account that holds his salary, your Honor, and yet it holds
20 nearly \$1 million in assets.

21 As we have described to the Court, this is also a
22 U.S.-based exchange and, in contrast, we have much less
23 visibility into the full scope of the defendant's holdings. He
24 was based in Singapore in the years leading up to his offense
25 and throughout his offense, and he has maintained few ties here

1 to the United States other than his family.

2 THE COURT: In reading submissions there are
3 occasional references, which I am not sure are accurate, to the
4 funds having been frozen. That's not true to your knowledge,
5 is it?

6 MS. RAVENER: Your Honor, our understanding is that
7 the cryptocurrency exchange at issue has taken the position
8 that they will not release the funds to the defendant.

9 THE COURT: That's not because of process served on
10 them by any governmental authority, to the best of your
11 knowledge, but their own reasoned decision assessing their
12 potential legal exposure?

13 MS. RAVENER: That's our understanding, your Honor.

14 Now, I will just note, of course, the government did
15 provide a copy of the bail order in this case to the exchange.

16 I also want to address a couple of other matters
17 placed at issue by the defense in part. The defendant's travel
18 to Los Angeles last week, your Honor, was not without incident,
19 as the defense reports. The defendant was kicked out of the
20 hotel he reported to the Court and the government he was
21 staying at. We understand that the defendant did notify
22 pretrial services that that happened, but the defense never
23 notified the government, never notified the Court, as we
24 believe was required under the order, that he changed hotels.
25 We now know that the reason the defendant was kicked out of

1 that hotel was because, among other things, he bragged that he
2 was under investigation by the FBI and encouraged employees to
3 read about his activities with North Korea and cryptocurrency.

4 This pattern of conduct, in addition to the attempt to
5 access the cryptocurrency exchange, shows a repeated flagrant
6 lack of respect for these proceedings, for the bail conditions,
7 and for the Court. It further emphasizes that we simply cannot
8 trust that the defendant will honor those conditions and appear
9 in court here for a trial. It heightens his risk of flight
10 that he repeatedly shows such disrespect.

11 I'd also like to address this matter about the alleged
12 involvement of pretrial services in this violation. We do have
13 one of the pretrial services officers here in court, and we
14 have made the local officer available by telephone, if needed.

15 But we have learned that the pretrial services office
16 only approved the defendant's mother to act as a "secretary,"
17 in the defense's terms, in theory, to help him get a job. The
18 defendant never got a job. That approval was, therefore,
19 obsolete. We have confirmed with pretrial services that the
20 only other thing they believe the defendant's mother was doing
21 for him on the Internet was tasks related to assisting in his
22 defense, which apparently involved using some kind of
23 Internet-based software, as reported to pretrial services.

24 There was no general awareness, as the defense claims,
25 that the defendant's mother was acting as his all-purpose agent

on the Internet, unbound by any other bail conditions, nor could there be. By their account, for example, there would be no violation of the bail conditions if the defendant's mother, for example, went on the dark web to purchase a passport for him or liquidated his cryptocurrency and then provided him the cash in fiat money or purchased citizenship for him in another country, as his own communications reflect he had a desire to do.

This cannot be the case. The defendant knows better. The defendant, and it appears he worked with others, has violated his bail conditions and there must be recourse from this Court. Thank you, your Honor.

THE COURT: Thank you.

Mr. Klein.

MS. AXEL: Good afternoon, your Honor, Keri Axel. I'll be speaking for Mr. Griffith.

THE COURT: Ms. Axel.

MS. AXEL: Your Honor, as we explained in our papers, we apologize to the Court for the confusion that occurred here. But there really is, I think, a misunderstanding. There was no violation of the bail order in this case and certainly no intent to flee.

Your Honor, I have explained in the papers my reading of the order and I -- as it says, it is a provision -- as we interpreted it, we believe that Mr. Griffith is barred from

1 using the Internet to access. But ultimately not to -- he is
2 not barred from accessing any financial account with the
3 exception of the specific provision in paragraph 5 that
4 governed cold wallets. And we sequestered those cold wallets,
5 as we were ordered to do, and we met and conferred, and those
6 are secured, as previously described to the government and to
7 the Court. We took care of that.

8 With that being said, he has other financial accounts.
9 And in consultation with his parents -- and his dad is here in
10 court today, he is here from Alabama, his mother,
11 unfortunately, was not able to travel because she, as the Court
12 notes, recently lost her mother and was really not just feeling
13 up to coming to New York today. But she is available, should
14 we ever need to bring her in by phone -- with his parents, who
15 really have always been a constant force in his life with
16 respect to managing his finances, they were beginning to think
17 ahead to trial in September and beginning to think about how to
18 make a plan to pay for counsel to come to trial.

19 In that respect, they reached out and my advice was,
20 your Honor, and I have explained and taken responsibility for
21 this, and I have talked to both Coinbase and I have talked to
22 the government about my interpretation of the order. My
23 interpretation of the order was Mr. Griffith himself could not
24 access the Internet to access his account, but that didn't
25 prevent his parents from doing it, just like they could access

1 a bank account or a brokerage account on his behalf. His
2 finances, so to speak, I don't believe, in my read of this
3 order, are restricted by the order.

4 THE COURT: Now, if Mr. Griffith wishes to assert
5 advice of counsel -- I'll hand this out to you. Let me have it
6 marked as Court Exhibit 1. I'll hand one out to each side.

7 This is, I believe, an accurate statement of the law
8 in this circuit on advice of counsel in the criminal context
9 taken from a charge to the jury on the subject in the case
10 that's been affirmed by the Court of Appeals for the Second
11 Circuit.

12 In considering whether the defendant acted willfully
13 and with knowledge, you must consider whether he honestly and
14 in good faith sought the advice of a competent lawyer as to
15 what he may lawfully do. This means that he sought and
16 obtained legal advice regarding a proposed course of conduct
17 before proceeding with that course of conduct. You must
18 consider whether the individual fully and honestly presented
19 all relevant facts to his lawyers and whether he honestly
20 followed such advice in good faith, relying on it and believing
21 it to be correct.

22 In short, you should consider, whether in seeking and
23 obtaining advice from lawyers, the individual intended for his
24 acts to be lawful. If he did so, he cannot be convicted of a
25 crime that requires willful and unlawful intent, even if such

1 advice were an inaccurate description of the law.

2 On the other hand, no defendant can willfully and
3 knowingly violate the law and excuse himself from the
4 consequences of his conduct by asserting that he followed the
5 advice of a lawyer. Whether the individual acted in good
6 faith, the purpose of seeking guidance as to the specific acts
7 in this case, before engaging in those acts, whether he made a
8 full and complete presentation of the facts to his lawyer and
9 whether he acted substantially in accordance with the advice
10 received are questions for you to determine.

11 If the defendant wishes to rely on advice of counsel,
12 all facts presented to his lawyer in connection with his course
13 of conduct are relevant. They are waived. There is no
14 privilege protecting them. That's why it's a serious step to
15 assert advice of counsel.

16 Now, it is the case that this is a bail review
17 hearing. It's very different than, say, for example, in a
18 criminal proceeding where an individual is accused of violating
19 the terms of his supervised release. One must show a
20 violation. And if there is no violation of the terms of
21 supervised release, the matter is at end. That is not the case
22 with bail review.

23 So, for example, if there were competent evidence that
24 a particular individual was looking at, calling up, finding
25 flight schedules to Dubai, that's not a crime, and it may not

1 be a violation of any order whatsoever. But that may change
2 the calculus on the risk of flight.

3 The same is true, for example, if someone won the
4 lottery and their financial condition changed. They didn't do
5 anything wrong in winning the lottery, but it may be the
6 circumstance for bail review and a different calculus on
7 whether or not the person should be released on bail.

8 If you want to raise advice of counsel, it seems to me
9 that it is fair game for the government to inquire whether or
10 not and what was described as the set of facts to his counsel.
11 Was it described to them that he would be asking the coin
12 exchange to delete the two-factor authorization protocol
13 because the FBI had seized his phone. These are questions that
14 become important. You tell me.

15 MS. AXEL: I suppose I would like to confer with my
16 client and my colleague about it, advice of counsel, your
17 Honor.

18 Could I perhaps address the two-factor authentication
19 question and some of the other of Ms. Ravener's comments?

20 THE COURT: Sure.

21 MS. AXEL: With respect to the two-factor
22 authentication, I think the entire message, which we submitted
23 to your Honor on the supplemental briefing once we received it,
24 I think actually indicates that there really was no desire to
25 be surreptitious or violate any condition of bond.

1 The thing about the FBI tells the reader, I don't have
2 access to these devices. You guys may need to do what you are
3 going to do with respect to getting appropriate access to this
4 account, and I think that was in fact the full intention. As
5 we put in the supplemental message, when his mother sent that
6 electronic message, they expressly put in my e-mail address, my
7 number. And they did that knowing that the process would take
8 some period of time, that there likely was a red flag on the
9 account and that over some period of time someone would then
10 reach out to me, as they did, in fact, eventually, casually.
11 It didn't seem like it was in a hurry when it occurred. I
12 didn't think anything of it, given what I already knew.

13 I said we would submit a power of attorney. We would
14 do everything that we needed to do to make sure it was properly
15 accessed through the parents' account. That's exactly, I
16 think, the intent of the message. The message shows that was
17 the intent behind it. This was going to fold over a slower
18 period of time. And it would not be unusual in the family that
19 the family take control of Mr. Griffith's accounts in this
20 matter. I think that was the intent.

21 Your Honor, viewed in that intent, I think you can see
22 there is no actual violation of the bond, nor is there, to the
23 Court's point, there is no real concern about this being in any
24 way connected with an intent to flee at all. It is just really
25 a misunderstanding about what was OK for Mrs. Griffith to do,

1 and a mistake in not expressly stating that it was
2 Mrs. Griffith initiating the inquiry.

3 With respect to the e-mails, your Honor, all the
4 e-mails do, I'm sure the Court has sent a customer service
5 inquiry. I did so recently or I actually -- I am trying to
6 think of the example. But what happens is, when your issue has
7 been opened for some time, you get an automated message. It
8 has a customer number on it or a ticket number assigned to the
9 thing that you have entered and it just has hashtags and says,
10 if you don't respond to this message, your inquiry will be
11 closed. That's what he responded to, just saying yes, I still
12 need assistance. That in and of itself, your Honor, we submit
13 is also not a bond violation. He just at that point was
14 keeping up the previous inquiry and that was done on the e-mail
15 account that is monitored.

16 THE COURT: Was the other e-mail on the account that
17 was monitored?

18 MS. AXEL: The other is not an e-mail. It had to be
19 done electronically. You go to Coinbase's website and you
20 initiate an inquiry. You check boxes. This is my
21 understanding. Kim is giving me a look. I have seen the
22 discovery and I've talked to the family. My understanding is,
23 it's an electronic message sent through the web. So, no, the
24 mother did that on her own device or on a family device.

25 THE COURT: And the defendant sent the response to the

1 e-mail himself. Is that accurate?

2 MS. AXEL: Upon receiving an inbound request in June,
3 at some period of time later he responded.

4 THE COURT: Himself directly.

5 MS. AXEL: Himself directly. Remember, your Honor, he
6 is allowed to e-mail. So he is just saying, I need assistance
7 to keep the account inquiry open. That's all it does. It
8 doesn't resolve it. It's not providing any information. It's
9 not substantively answering questions. It's just keeping the
10 account open.

11 THE COURT: I'll give you an opportunity to respond to
12 this.

13 Let me read the order entered by Judge Broderick
14 sitting in part I on January 2, 2020 at paragraph 14. It does
15 say he is allowed to e-mail, but listen to what Judge Broderick
16 said.

17 Defendant's Internet activity will be limited to
18 communicating with his counsel by e-mail. Defendant is not to
19 access the Internet for any other purpose and is specifically
20 prohibited from accessing any of his cryptocurrency accounts
21 and from accessing the dark web.

22 You maintain that he has the right and the ability to
23 directly e-mail with persons other than his counsel under this
24 order?

25 MS. AXEL: Your Honor, yes. You had modified the

1 order. We have a modification that allows him to e-mail for
2 other purposes. What is that, in April of this year? He does
3 have a modification that allows him to e-mail on the monitor
4 computer.

5 THE COURT: So this is my fault. OK.

6 MS. AXEL: It's just --

7 THE COURT: It seems like it is my fault.

8 MS. AXEL: I didn't mean to suggest that.

9 THE COURT: I'm suggesting it. I don't think you were
10 suggesting it. I'm suggesting it. That was your application.

11 MS. AXEL: Yes, your Honor.

12 THE COURT: What number is that on the docket?

13 MS. AXEL: We are searching for it, your Honor.

14 I do know it's after -- here it is. Docket 92.

15 THE COURT: It seems to me that that related to
16 e-mails with nonattorneys. How do you account for the balance
17 of 14, which reads: Defendant is not to access the Internet
18 for any other purposes and specifically is prohibited from
19 accessing any of his cryptocurrency accounts and from accessing
20 the dark web. That wasn't modified, correct?

21 MS. AXEL: Yes, your Honor.

22 THE COURT: Yes, it was not modified.

23 MS. AXEL: Correct, it was not modified.

24 THE COURT: Go ahead.

25 MS. AXEL: To answer the Court's question, I think

1 what accounts for it is that we did not view this as accessing
2 his cryptocurrency account. Access is restricted. That's
3 really the whole point of the initial inquiry, to allow someone
4 to access.

5 THE COURT: The cryptocurrency -- it may be true as to
6 the cryptocurrency. It's not true as to the account.

7 MS. AXEL: An e-mail in response to an automated
8 customer service --

9 THE COURT: No. I'm talking about -- listen. You
10 have a problem here, Ms. Axel. Part of the problem arises from
11 your letter. Your letter makes it plain that Mr. Griffith sent
12 the communications to Coinbase.

13 When Mr. Griffith was denied permission to use the
14 Internet to work, I don't know when that was. When was that?
15 I thought we just decided that I had modified his bail
16 conditions. What do we mean on page 4 of your letter? When
17 Mr. Griffith was denied permission to use the internet to work,
18 I thought we just established that he may use e-mails to
19 communicate with nonattorneys.

20 MS. AXEL: Yes, your Honor. Different chronology of
21 events, your Honor. In July 2020, we specifically moved for
22 him to be able to use the Internet directly, not just via
23 e-mail, but actually use the Internet to be able to work; for
24 example, to be able to log in and to be able to use a
25 cloud-based server for a potential employee. To do programming

1 directly on a computer as, of course, might be within the scope
2 of his services, were he allowed to work.

3 THE COURT: Let's continue.

4 When Mr. Griffith was denied permission to use the
5 Internet to work, Mr. Griffith collaborated with his parents on
6 a system that would permit him to work. The idea -- and this,
7 by the way, parenthetically, he was not going to work for
8 Coinbase, I take it, right?

9 MS. AXEL: No.

10 THE COURT: The idea was that his mother, Dr. Susan
11 Griffith, could act as an assistant to access the Internet on
12 his behalf to permit him to do work that required Internet use
13 while complying with, presumably, the Internet restrictions of
14 his bond.

15 It later goes on to say, when undersigned counsel
16 advised Mr. Griffith that his parents could access the Coinbase
17 account on his behalf, Mr. Griffith and his mother thought this
18 meant she could attempt to gain access using this secretarial
19 arrangement. Your letter acknowledges that the access of the
20 Internet was on his behalf. It was on his behalf and in his
21 name. Those are the facts.

22 MS. AXEL: Your Honor, just to put it in context --

23 THE COURT: Is that correct? It was in his name and
24 on his behalf, yes?

25 MS. AXEL: Yes, your Honor.

1 To put that in context, your Honor, these little
2 things where the parents need to access the Internet on his
3 behalf do come up. For example, they came up as we entered
4 court today. He had to have a phone to use to get his
5 temperature done to get in.

6 THE COURT: No, he didn't. He could have made
7 application to me, and I would have cut an order to give him
8 access.

9 MS. AXEL: We didn't even know that these restrictions
10 occurred, so we showed up at 1:30.

11 THE COURT: How many times have you been to this court
12 in this case? Zero, I think.

13 MS. AXEL: One pre-COVID.

14 THE COURT: In my courtroom?

15 MS. AXEL: Yes.

16 Mr. Griffith's father, who is here, used his phone,
17 put in Mr. Griffith's name, they used his phone to get his
18 temperature done, and Mr. Griffith came in. After which
19 Mr. Griffith's dad then had to set up a new identity and use
20 his phone again.

21 THE COURT: You think that's fine. You are like
22 bragging that this is good.

23 MS. AXEL: These kinds of things happen all the time
24 and Mr. Griffith has constantly consulted Carl, his pretrial
25 services officer in Alabama, who has used the word to us and to

1 the family that for certain life issues, yes, Mr. Griffith's
2 family could access the Internet on his behalf.

3 THE COURT: And this was a life in when he contacted
4 Coinbase.

5 MS. AXEL: It was, your Honor, because they are going
6 to need money for their defense.

7 THE COURT: According to your letter, his father is
8 paying the cost of the defense. So I take it that the cost of
9 the defense is not, directly or indirectly, being paid by any
10 person other than the father. The Ethereum Foundation is not
11 paying any portion of the legal fees, is that correct?

12 MR. KLEIN: Your Honor, we would be happy to talk with
13 you in camera about who is paying for the defense, but we will
14 tell you we feel like that's something we should talk to you
15 about, and maybe not in a public courtroom, in terms of how his
16 defense is being financed.

17 THE COURT: The problem, Mr. Klein and Ms. Axel, is
18 you're putting forth a story that is likely not true.

19 MR. KLEIN: Your Honor, absolutely what we put in our
20 papers we spent a lot of time and it is accurate. That's why
21 you see things --

22 THE COURT: It may be accurate, but it may also be
23 misleading.

24 MR. KLEIN: Your Honor, we do not believe it's
25 misleading.

1 THE COURT: Come on over to the sidebar. Let's hear
2 it.

3 (Pages 22-23 SEALED)

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1 (In open court)

2 THE COURT: Go ahead, Ms. Axel.

3 MS. AXEL: Your Honor, just a few other things. The
4 alleged involvement by pretrial services, I have spoken
5 personally with Carl many times, and I have spoken with him
6 about these events several times.

7 With respect to what's in our papers regarding the
8 general awareness that this arrangement continued, I read that
9 to him, and then Mr. Klein got on the phone in a separate call
10 and we read it again to him twice to make sure he was
11 comfortable with that. Frankly, he was actually comfortable
12 with even stronger wording the first time I read it to him, and
13 we backed it down. He began to get very nervous sort of being
14 in the middle of this.

15 I think it is a difficult situation. He knows the
16 family. As we have said, they are upstanding members of the
17 community in Tuscaloosa. They are both doctors. They are
18 church-going people. They are not going to help him flee.
19 They have a million dollar bond on their own house and it is
20 quite significant in Tuscaloosa to have that kind of a bond.
21 That's a lot of money.

22 Carl, knowing them, did not view that they would in
23 any way, shape, or form be involved in any effort for anyone to
24 flee. They are really law-abiding people. They are very
25 careful people, too, which is why they began to sort of think

1 about this plan to pay counsel in advance.

2 Recognizing that we all could have done things better,
3 I will certainly pledge to be better at making sure all
4 communications are clear and are clear with John as well
5 because we have sort of two layers of different supervision
6 here. There is the local person in Tuscaloosa and then there
7 is the person here.

8 THE COURT: Let me be clear. Pretrial services works
9 for the Court. No pretrial services officer has the power to
10 modify a judicial ruling.

11 And pretrial services knows that, right, Mr. Moscato?

12 MR. MOSCATO: That's correct.

13 THE COURT: You can have all the conversations you
14 want with pretrial services and maybe it's a relevant thing for
15 me to think about in this case. But that which is prohibited
16 by a court order cannot be permitted, regardless of what a
17 lawyer for the individual says or the pretrial service officer
18 says. It may bear on the defendant's intent, but that's as far
19 as it goes.

20 MS. AXEL: In addition to bearing on the defendant's
21 intent, it is also often necessary for defendants to consult
22 pretrial services officers when issues come up about areas and
23 whether or not they violate a court order. So I think that was
24 the spirit of asking the questions here. How can we do this
25 and not violate the court order.

1 I think in that respect pretrial services officers, as
2 arms of the Court, do make those kind of determinations every
3 day. So this is an area where they felt, the family felt that,
4 given the relationship with Carl and what he had said, that
5 there was a green light for this secretarial practice. And
6 they understood that to be the case in working with him to
7 comply with the order, not to violate it or not to modify it in
8 any way.

9 If we thought we were seeking a modification, of
10 course, we would come to the Court and ask for it. We have
11 multiple times. The Court has granted them. The Court has
12 denied them. All of those things. We understand the Court's
13 authority in that matter and have no issue with that. We
14 weren't asking Carl or John for any kind of a modification. It
15 was a reading of the order, your Honor.

16 Does the Court have other questions for me?

17 THE COURT: You didn't respond, I noticed prominently,
18 to the contention by the government that in 2019 there were
19 text messages sent by Mr. Griffith regarding changing his
20 citizenship.

21 MS. AXEL: Your Honor, that issue was prominently
22 litigated at the time of Mr. Griffith's initial bond hearing,
23 and we responded in writing to the issue of those text
24 messages, and I think they were both misconstrued, and we had
25 ultimately, you know, a response to exactly what he decided to

1 do.

2 That issue was not raised in their papers, and I would
3 not want to not properly respond to the Court exactly the whole
4 story. That whole issue was out in front of Judge Broderick.
5 He asked for further support. He asked for the text messages
6 themselves. And that was litigated when the first bond order
7 was put in place. And, with that, we have conditions that we
8 currently have, which have been sufficient to mitigate risk of
9 flight.

10 I do point out, again, this issue of the Coinbase
11 account was raised by the government prior to his travel to Los
12 Angeles. We knew that they had concerns. They were as
13 strenuous in their objections as they have been today. We
14 provided our explanation of what happened. I had already
15 talked to Coinbase and promised to follow up with them about
16 what they needed in order to hopefully work together on
17 something that might ultimately allow the parents to access his
18 account or maybe to take over the account with the power of
19 attorney, and we discussed that. And, with that, we also made
20 great steps to put them in touch with Carl directly so they can
21 speak to him. We provided his information to them.

22 Vice-versa. We literally said, Carl, you need to call them.
23 Here are their numbers. With that, we didn't hear anymore.
24 That was Friday afternoon.

25 Mr. Griffith traveled on July 5 to meet with us, was

1 in Los Angeles all week, and then the government filed its
2 papers on Friday. Knowing that they were moving for this bond
3 revocation hearing, he then flew back to Tuscaloosa, stayed
4 there and came to court today. He has traveled twice to New
5 York, once before the cryptocurrency hard drives were all
6 secured. He has traveled twice to Los Angeles, once going and
7 coming, both knowing this was happening over his head. There
8 really is no intent to flee here, your Honor, and no connection
9 at all between these events and any attempt to flee.

10 THE COURT: Thank you.

11 It's the government's burden on a bail review
12 application, so I will give the government the last word.

13 MS. RAVENER: Thank you, your Honor. There are a
14 couple of points I'd like to address.

15 First of all, with respect to this matter about the --
16 whether in fact there has been a bail violation, and defense
17 counsel has spent a lot of time explaining how they worked on
18 this issue allegedly.

19 But earlier this year defense counsel raised with the
20 government the fact that the defendant generally wanted to cash
21 in on the rising value of cryptocurrency. Quite obviously,
22 they raised this issue with us because they understood that
23 cryptocurrency accounts could not be accessed pursuant to the
24 bail order. Otherwise, there would have been no need for the
25 conversation.

1 And we specifically advised the defense at that time
2 that they should come back to us with a proposal on how that
3 could possibly be done without the defendant accessing his
4 cryptocurrency accounts and increasing the risk of flight in
5 this case. We then heard nothing further from defense counsel
6 about this matter.

7 And this issue, again, was of great concern when we
8 litigated their motion to modify his bail conditions in March.
9 We again raised our concerns about his access to these
10 cryptocurrency accounts. The funds in this particular account,
11 your Honor, are subject to further investigation for, at a
12 minimum, the reasons I have stated.

13 All of that goes to show that this appears to the
14 government to be much more likely a post hoc rationalization of
15 the defendant's bail violation. There can be no dispute, and
16 we have the communications that were produced to us, available
17 here for the Court, there can be no dispute that the message
18 that was sent to this cryptocurrency exchange was seeking
19 access to the cryptocurrency itself. The message said, my
20 lawyers now tell me it is permitted for me to access my
21 cryptocurrency on this exchange, and then it sought removal of
22 the two-factor authentication restricting access to the account
23 precisely so that access to the funds could be had.

24 What troubles the government, your Honor, to focus
25 back on the risk of flight, which is really at the heart of the

1 issue, is that this is part of a pattern of conduct from this
2 defendant. And we understand that defense counsel is now
3 standing behind that pattern of conduct, but it doesn't make
4 the pattern of conduct any more excusable. When he is told no,
5 he attempts to circumvent that rule. That's what's happened
6 with the cryptocurrency prohibition. That's frankly what has
7 happened with respect to the issue of his alleged efforts to
8 work.

9 Defense counsel acknowledges they moved back in July
10 of 2020 for him to have access to the Internet for him to
11 allegedly work. This Court denied that application because of
12 the serious issues presented by the defendant's risk of flight,
13 not including his significant assets that are held in
14 undisclosed locations, his lack of transparency with pretrial
15 services about his financial condition, his lack of ties to the
16 United States, the fact that he was living in Singapore working
17 for a European foundation for years before he was arrested, his
18 offense conduct, of course, actually providing services to the
19 DPRK and the DPRK persons, and the fact that he is an expert in
20 the dark web, who has actually created a program that enables
21 one to search the dark web where things like false passports
22 can be bought.

23 To go back to your Honor's questions, I unfortunately
24 don't have the exact text messages with me. We are happy to
25 supply them to the Court. But it was shortly before the

1 defendant's arrest that he sent messages actively exploring
2 renouncing his United States citizenship, describing his
3 interest in paying thousands of dollars to purchase citizenship
4 in a Caribbean nation.

5 And he appears to believe that his wealth could help
6 him avoid significant criminal sanctions, including with
7 respect to the conduct at issue in this case. Shortly after
8 leaving North Korea, on April 26, 2019, the defendant wrote the
9 following to his mother, the person who defense counsel now
10 alleges is acting as his purported secretary. I think I am
11 going to be the connector in Blockchain mediated economic
12 relations between DPRK and South Korea. Should be fun.
13 Hopefully won't have much jail time for it. I'll try to be
14 wealthy enough to pay my bail.

15 Your Honor, that's part of a continuous pattern. On
16 August 7, 2019, while the offense was still ongoing, during the
17 conspiracy, the defendant spoke the following words in an audio
18 message to another person regarding his plans to conduct a
19 financial transaction between North and South Korea:

20 "Probably, worst comes to worst, I'll find someone to send as
21 like an emissary to go, and I'll like tell that person what to
22 do via the phone. Yes. I can always do that because it seems
23 like the Americans let you get away with it once."

24 The defendant has demonstrated a pattern of evading
25 the law, evading court orders. It's not news that one of the

1 means by which he does that and has been doing that apparently
2 for much of the pendency of this case, as well as during his
3 offense conduct, is to try to act behind the scenes and use
4 agents to act on his behalf. This was clearly prohibited,
5 explicitly prohibited by the bail order.

6 The defendant was originally detained in this case,
7 your Honor. He was detained by the magistrate precisely
8 because he presented such an extreme risk of flight, and he was
9 released only on appeal to Judge Broderick sitting in part I,
10 based on these stringent conditions. The defendant has
11 demonstrated that he is spending much of his time working to
12 circumvent those very conditions and, we submit, has actually
13 violated them.

14 THE COURT: Thank you.

15 Ms. Axel, there was a new matter brought up.

16 MS. AXEL: A lot of new matters, your Honor.

17 Many of the arguments here are things that were really
18 fully litigated at the time of the initial bail hearing. They
19 weren't raised in the short letter to your Honor. I just feel
20 like we really don't have the full record in front of us to
21 respond to all of them, as we have responded to them before.
22 I'm too old, your Honor, to remember every one of the things
23 that we went down and hunted down to respond to them.

24 THE COURT: Ms. Axel, the one truth here is that in
25 this proceeding today the Court does not look like you would

1 look in the violation of supervised release at what some
2 violation is and whether the violation occurred or not. You
3 look at the entirety of the circumstances and determine whether
4 there are conditions or combinations of conditions that can
5 reasonably assure the appearance of the defendant in future
6 proceedings. That's what a bail review hearing does.

7 MS. AXEL: I agree entirely with your Honor about
8 that. Because of that, your Honor, I think you have to look at
9 the entirety of the circumstances here and say, you know, it
10 would be unfair to find a violation based on, you know, perhaps
11 what the Court thinks as inaccurate or bad legal advice that
12 was misinterpreted by the family. That just does not strike me
13 as fair, looking at the entirety of the circumstances.

14 Of course, your Honor, and I dialogued about the dark
15 web back in the hearing in July. That I remember succinctly.
16 What we put in at the time is, the government has offered
17 discovery that shows that Mr. Griffith in fact met with law
18 enforcement and assisted law enforcement, both U.S. and
19 Singapore-based law enforcement, with accessing the dark web.
20 He viewed this as really more of a research interest to show
21 how people use the dark web.

22 Also, people like dissidents, people for human rights
23 purposes. He has written a paper on that. And then he also
24 assisted law enforcement. So everything is just flipped on its
25 head.

1 I think it's also important for me to respond because
2 I know this and I was there personally. From the very
3 beginning the prosecution in this district has said there was a
4 lack of transparency with regard to resources because in the
5 initial pretrial package prepared by pretrial services, there
6 was a summary of financial resources rather than a delineation
7 of pretrial resources. I sat by Mr. Griffith in lockup in the
8 U.S. Marshals with the U.S. pretrial services officer in Los
9 Angeles. When Mr. Griffith tried to provide more detail about
10 different accounts, the pretrial services officer says, I just
11 need a summary.

12 And that is what is the basis of this consistent
13 representation that he hasn't been forthcoming with pretrial
14 services. We have never heard that from pretrial services. We
15 have never called the person in Los Angeles, but I was there
16 and he did say that. It's not a fair representation of the
17 facts.

18 As I also said to your Honor when we had this dialogue
19 over the phone in July, Mr. Griffith has a Ph.D. from Cal Tech.
20 If he wants to do something like these crazy, surreptitious
21 uses of finding his way to the dark web to go procure a
22 passport, your Honor, there are other ways to do it that are
23 not sitting in his home working with his parents, trying to be
24 on the monitored advice, talking to pretrial services. That's
25 just not what a crazy doctor does. They go sit in Starbucks.

1 They access the dark web. None of that is happening.

2 These errors of judgment have been made very
3 transparently through e-mail messages that are obviously going
4 to trigger legal review, e-mail messages that -- electronic
5 messages that reference that the FBI is involved, e-mail
6 messages that say contacts counsel from the mother involved.

7 While it's unartful, inaptly done, it's certainly not
8 consistent with any intent to violate your Honor's orders. It
9 really is not. Quite to the contrary, the attempt is to stay
10 within the home, within the strictures that have been provided
11 by this Court.

12 Finally, your Honor, we would say, you know, we, of
13 course, are amenable to continuing to confer about what
14 condition the Court feels would minimize the risk of flight or
15 provide greater clarity so that we don't have to involve Carl
16 anymore or ask any questions, whatever the Court would like to
17 proffer in that way. We only have a few months of trial.
18 Nothing here has changed. We obviously still request a way to
19 access this account and want to do that lawfully and in
20 accordance with this Court's orders. That's what we would
21 really like to try to accomplish.

22 THE COURT: Thank you.

23 MS. AXEL: Thank you.

24 THE COURT: This is the Court's statement of reasons
25 for its decision on reviewing the bail conditions of defendant,

1 Virgil Griffith.

2 In considering the issue I've considered the totality
3 of circumstances since this case was filed and an indictment
4 was filed January 7, 2020. I have considered the fact that
5 defendant came here today for this proceeding. I have
6 considered that defendant is charged in a single count of
7 conspiracy to violate the International Emergency Economic
8 Powers Act and, according to the government, faces imprisonment
9 for up to 20 years.

10 I have considered the fact that in the interim, since
11 the indictment and the setting of bail in this case, there have
12 been a number of rulings that the Court has issued in the case
13 and that now we are getting close to trial in this action.

14 I have considered the fact that the Court has been
15 open to modifying the defendant's bail and has done so. Did it
16 last February, as we established in an order.

17 The fact of the matter is that without even
18 considering defendant's e-mails in this case -- or not e-mails,
19 but electronic communications in this case with Coinbase, the
20 circumstances have changed. One important circumstance that
21 has changed, not because of defendant's doing, but his Coinbase
22 holdings of cryptocurrency has gone from what is described by
23 defense counsel to something -- or the government as something
24 in the neighborhood of \$100,000 to today closer to a million
25 dollars. That's a new circumstance and not one that is the

1 defendant's doing. But it changes the calculus on this
2 particular individual's incentives to flee.

3 Now, with regard to whether or not the Court's order
4 was violated, it doesn't take a lot of depth to conclude that
5 it has been violated. Paragraph 14 says, unambiguously:
6 Defendant is not to access the Internet for any other
7 purposes -- this is the e-mail communications -- any other
8 purposes and is specifically prohibited from accessing any of
9 his cryptocurrency accounts and from accessing the dark web.
10 The explanation that he used his mother as a secretary, in
11 essence, to communicate, as the letter puts it, "on his
12 behalf," that the mother could "act as an assistant to access
13 the Internet on his behalf" reflects that a person of
14 reasonable intelligence, which Mr. Griffith is, would know that
15 that would not permit him to access the Internet, which is
16 specifically prohibited of accessing any of his cryptocurrency
17 accounts.

18 The text message that was sent was sent in the name of
19 Mr. Griffith. "I presume my account was restricted due to the
20 pending litigation against me. My lawyers now tell me that it
21 is permitted for me to access my cryptocurrency on Coinbase.
22 If you'd like, you can speak to her, Keri Axel, and the e-mail
23 address. You can also reach me at an e-mail address or via
24 phone, telephone number. Related, I am going to need the 2FA,
25 two-factor authorization, removed as the FBI took my devices

1 away.

2 Now, that was accessing the account. If not accessing
3 the account, it was attempting to access the account.

4 Accessing the account does not mean necessarily withdrawing
5 funds. Although I take it that he asserted to Coinbase that my
6 lawyers now tell me that it is permitted for me to access my
7 cryptocurrency -- not my account -- my cryptocurrency on
8 Coinbase.

9 I don't believe I heard Ms. Axel go that far today,
10 that it is perfectly permissible, perfectly permissible,
11 provided the mother has used and sends the message on his
12 behalf, to access the cryptocurrency. I didn't hear that. I
13 heard that it was OK, in counsel's view, to use the mother to
14 do indirectly what the defendant cannot do directly. It's no
15 different than Mr. Griffith coming into my courtroom and saying
16 he didn't violate the order because he used voice recognition
17 software. He didn't type it. The machine did it. He spoke
18 words into the machine and the machine did it.

19 My concern is with flight. I think it was a difficult
20 question that Judge Broderick had when he first had this bail
21 application and came to a different conclusion than the
22 magistrate judge; in that respect, Judge Broderick's decision.
23 But the calculus has now changed.

24 The defendant is remanded to the custody of the United
25 States Marshal until trial.

1 Is there anything further from the government?

2 MS. RAVENER: No, your Honor.

3 THE COURT: Anything further from the defendant?

4 MS. AXEL: No, your Honor.

5 THE COURT: Thank you all very much.

6 (Adjourned)

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